IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15924 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINOD JIVABHAI DABHI

Versus

THE DIST. MAGISTRATE

Appearance:

1. Special Civil Application No. 15924 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MRS HANSA B PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/01/2005

ORAL JUDGEMENT

ORAL JUDGEMENT

1. This Special Civil Application under Article 226

of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Rajkot City, on 27th of May, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 18th of July, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority relied upon two types of materials. Firstly, three crimes registered against the petitioner for the theft committed by him in respect of two wheeler vehicles, and secondly, two in-camera statements, as recorded by the sponsoring authority on 24th of May, 2004 and verified by the detaining authority on 25th of May, 2004, concealing the identity of the witnesses, claiming privilege under Section 9(2) of the PASA Act. Three crimes - on 10th of March, 2004, 7th of May, 2004 and 9th of March, 2004 came to be registered against the petitioner, two at Malviyanagar Police Station, Rajkot, and one at Gandhigram Police Station, Rajkot. It was alleged that the petitioner was found engaging in activities of stealing Hero Honda Splender motorcycle in each crime registered against the petitioner. In all these three cases, the petitioner is on bail. The detaining authority thoroughly examined the investigating papers in these three crimes as placed before him. So far as in-camera statements are concerned, one witness recorded the incident of 4th of March, 2004, when he was at his place of business at about 7.00 p.m., the petitioner and his associate in drunken condition, came at the business place of the petitioner for taking breakfast. Petitioner and his accomplice were speaking abuses. On account of this, other customers of the witness walked out of the place. Therefore, witness tried to persuade the petitioner and requested him to leave his business place. The petitioner and his accomplice were excited by the persuasion of the witness and started giving abuses to the witness and had broken down the chairs placed there. The witness observing this behaviour of the petitioner and his accomplice, stated that if the petitioner and his accomplice did not leave the business place of the witness, he would call police immediately. On saying so, the petitioner took out knife and threatened the witness that if the police was called, the witness would be done to death with the knife. The persons were gathered there, but due to fear of the petitioner and his accomplice, nobody dared to rescue the witness. On the

contrary, to create terror, the petitioner and his accomplice rushed towards the crowd with open knife, therefore, the crowd was dispersed. The atmosphere of terror and fear was spread . Ultimately, by the act of supplication by the witness, he was allowed to go . Due to fear of the petitioner and his accomplice, the witness did not file any complaint before the police. The second witness referred to the incident of April 24, 2004. While the witness was present at his place of business at about 5.00 p.m. the petitioner came their along with one person on Honda Motorcycle and approached the witness. The witness refused to serve any breakfast to the petitioner and his accomplice because they were not paying the bills. On that day, the petitioner and his accomplice demanded Rs. 500/- as loan, but the witness refused and requested the petitioner to go away from the place. The petitioner and the person with him were excited and started giving abuses to the witness and threatened the witness that if the witness filed complaint before the police, then he would be done to death. By saying so by the witness in response, both of them started beating the witness. The persons gathered around the place of incident, but nobody dared to interfere. In the meantime, the accomplice of the petitioner took out a knife and threatened the witness with the knife that if witness dared to file complaint against them, he would be done to death and, thereafter, both of them with open knife rushed towards the crowd gathered there. The crowd was dispersed. For some time, the area was terror stricken. Ultimately, the witness by act of supplication, he could save himself. From the above material, the detaining authority came to the conclusion that the petitioner was a dangerous person within the meaning of the PASA Act. The activities of the petitioner, in view of the detaining authority, was prejudicial to the maintenance of public order. After considering other remedies available against the petitioner, the detaining authority came to the conclusion that the activities of the petitioner were required to be prevented forthwith, and for that, there was no other alternative, except to detain the petitioner under the PASA Act. The detaining authority, therefore, passed the order of detention of the petitioner which is under challenge in this petition.

3. Learned Advocate Mrs. Subhadra G Patel for the petitioner and learned AGP Mrs.H.B. Punani for the respondents were heard at length.

5. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP,

it appears that this petition can be examined and disposed of on the sole issue that whether there was sufficient material placed before the detaining authority to come to the conclusion that by the activity of the petitioner, the public order was disturbed.

6. To reach to the subjective satisfaction that dangerous activities of the petitioner were prejudicial to the maintenance of public order, the detaining authority must rely upon the cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While going through this exercise, the detaining authority is also required to draw a line between "breach of law and order" and "breach of public order". Coming to the facts of the present case, firstly, the detaining authority has relied upon three criminal cases filed against the petitioner under Sec. 379 of the Penal Code for committing theft of two wheeler motor cycles. Going through the investigation papers, as placed on record, it is clear that there is no indication that the activities of the petitioner were prejudicial to the maintenance of public order. At the most, the case registered against the petitioner can be branded as breach of law and order, for which the petitioner may be tried and punished, if he is found guilty, but surely the act constituting each offence registered against the petitioner cannot be said to have affected the even tempo of life of the community. Therefore, registration of cases against the petitioner for committing theft of two wheeler motorcycles has no bearing at all on the question of disturbance of the public order by the activities of the petitioner

7. The remaining material which the detaining authority took into consideration is in shape of two in-camera statements, as narrated above. To reach to the subjective satisfaction about disturbance of public order, again, it would be necessary for the detaining authority to consider, fall out, reach and impact of the activities of the petitioner to judge whether potentiality of the activities was capable of disturbing public order. Two incidents narrated in in-camera statements clearly reveal individual disputes, which could be taken care of by general law and can be termed as breach of law and order. This incident cannot be said to be affecting the society at large or section of the society or even tempo of the life of the community. Therefore, the potentiality of the act of the petitioner

alleged through in-camera statements, from the bare reading of them do not disclose capability to disturb the even tempo of the life of the community or society at large or section of the society. Therefore, even after considering two in-camera statements on their face value, they are unable to convince that the activities disclosed by the statements were prejudicial to the maintenance of public order.

9. The facts of the case are squarely covered in the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393, wherein the Division Bench of this Court after considering the decision of the Apex Court, observed in paras 20 and 21 as under :

"20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki vs. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, no action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State

of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

10. In the view of the matter, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by Police Commissioner, Rajkot City, on 27th of May, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Vinod Jivabhai Dabhi is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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